

**NOT INTENDED FOR PUBLICATION**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE:	:	CASE NO. 00-71661
	:	
COASTAL CARE RESOURCES, L.L.C.,	:	CHAPTER 11
	:	
Debtor.	:	JUDGE MASSEY
_____	:	
JAMES H. ROLLINS and	:	
U.S. BANK NATIONAL ASSOCIATION,	:	
	:	
Movants,	:	
	:	
v.	:	CONTESTED MATTER
	:	
STEVEN L. DYE,	:	
	:	
Respondent.	:	
_____	:	
STEVEN L. DYE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	ADVERSARY NO. 03-9288
	:	
U.S. BANK AND TRUST, N.A.,	:	
	:	
Defendant.	:	
_____	:	

**ORDER GRANTING MOTIONS FILED BY U.S. BANK NATIONAL  
ASSOCIATION AND JAMES H. ROLLINS FOR SANCTIONS AGAINST  
STEVEN L. DYE PURSUANT TO BANKRUPTCY RULE 9011**

On October 15, 2003, U.S. Bank National Association (“U.S. Bank”) and James H. Rollins, its attorney, moved for an order pursuant to Rule 9011 of the Federal Rules of Bankruptcy Procedure imposing monetary sanctions against Steven L. Dye based on Mr. Dye's refusal to withdraw a motion

he had filed on September 12, 2003 (the “Rollins Motion”) (document no. 551) in the above-referenced Chapter 11 case, seeking Rule 9011 sanctions against Mr. Rollins and against Timothy Walsh, an attorney for the successful plan proponent in this Chapter 11 case. On October 21, 2003, U.S. Bank and Mr. Rollins filed the identical motion in adversary proceeding 03-9288 referenced above, seeking monetary sanctions against Mr. Dye for his refusal to withdraw the complaint (the “Complaint”) filed on September 18, 2003. In the Complaint, he sought damages against U.S. Bank and revocation of the confirmation order entered in the main bankruptcy case. Movants also seek as an additional sanction an order barring Mr. Dye from filing further pleadings in connection with this case, unless authorized by the Court to do so.

Mr. Rollins and U.S. Bank contend that the Rollins Motion and the Complaint are frivolous because neither one has a reasonable factual basis, because neither one has a sound legal basis and because Mr. Dye filed these pleadings in bad faith for an improper purpose. The Court held an evidentiary hearing on the motions on January 29, 2004. In addition to hearing testimony, the Court, without objection, took judicial notice of all pleadings filed and proceedings held in this case, including the adversary proceedings. The Court makes the following findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure made applicable by Bankruptcy Rule 7052.

Steven L. Dye was the sole member of the Debtor, Coastal Care Resources, L.L.C., prior to the confirmation of the plan of reorganization filed by The GMS Group, LLC. In 1997, Coastal Care financed the construction of a personal care facility by borrowing the proceeds of sales of bonds issued by the Savannah Economic Development Authority. The Debtor executed and delivered notes in the aggregate amount of \$5,835,000 and security documents, which were assigned to the indenture trustee. The notes were secured by virtually all of the Debtor’s assets, including the personal care

facility. GMS was the underwriter of the Coastal Care bond issues and U.S. Bank is the successor to the original indenture trustee. The venture was unsuccessful. When U.S. Bank as indenture trustee began foreclosure proceedings, Coastal Care filed this Chapter 11 case in September 2000.

The Debtor's effort to reorganize itself was also unsuccessful. Between September 2000 and April 2003, it paid only a small fraction of the interest due on the notes and defaulted on a principal payment due on one of the notes. The parties agreed that the Debtor's assets were worth much less than the amount owed on the bonds secured indirectly by those assets.

The Debtor proposed a plan that was amended several times. Under the Debtor's plan, bondholders would either have had to accept a reduction in the amounts of their claims or would have been forced to accept deferred payments on their claims, the funds for which were to be derived from future earnings at projected levels the Debtor had never achieved. But Stephen Dye would have continued to hold the equity in the Debtor by paying in a very small amount of new capital relative to the total amount of claims of creditors. When the exclusivity period expired in late 2001, GMS, holder of Coastal Care bonds with a face value in excess of \$1,500,000, proposed a plan of reorganization. Under GMS's plan, which was also amended several times, bondholders would exchange their bonds for all of the equity in the reorganized debtor, thereby eliminating Dye's equity interest, while general unsecured creditors would receive a small dividend that those creditors would never see in a liquidation.

Realizing that the GMS plan would almost certainly be confirmed, Mr. Dye with the help of the Debtor's lawyers and his own personal lawyer engaged in extensive litigation to block confirmation of the GMS plan. That litigation was based on Mr. Dye's and the Debtor's contention that GMS did not own the bonds it claimed to own and was engaging in a fraud on the Court. Notwithstanding the long and loud assertion by the Debtor's lawyers, Dye's lawyer and Dye that

GMS was perpetrating a fraud on the Court, Dye never produced any evidence whatsoever to prove his contention.

The Court took these allegations of misconduct very seriously. Confirmation hearings began and were rescheduled based on complaints of Dye and the Debtor that an initial vote on the plans (which overwhelmingly favored GMS's plan) was flawed. In the fall of 2002, Mr. Dye fired the Debtor's lawyers. Because he failed to cause the Debtor to obtain new counsel, the Court considered only the GMS plan at the continued confirmation hearing held in the late fall of 2002. At the continued hearing, Mr. Dye's counsel continued to assert that GMS did not own bonds and had engaged in a fraud on the Court. Mr. Dye failed, however, to present any evidence whatsoever showing that GMS or U.S. Bank had engaged in any kind of improper conduct.

Following the appointment of an examiner by the United States Trustee in November 2002, Mr. Dye once again had an opportunity to produce evidence of alleged fraud and misconduct. The examiner reported to the Court that GMS owned the bonds that it claimed to own and that Mr. Dye had failed to produce any evidence whatsoever concerning alleged misconduct and fraud, despite extensions of time given by the examiner to produce such evidence.

On April 7, 2003, the Court entered an order confirming the GMS Plan. The confirmation order was based on Findings of Fact and Conclusions of Law filed on the same date in which the Court determined that GMS owned the bonds it claimed to own and that the various objections to confirmation asserted by Mr. Dye were completely without merit. Thereafter, Mr. Dye filed numerous motions and two adversary proceedings in an attempt to upset the confirmation order, none of which had any merit whatsoever. Until July 1, 2003, Dye's personal attorney, Frank X. Moore, signed the pleadings discussed below in which Dye attempted to revoke the confirmation order. On and after July 1, 2003, Mr. Dye represented himself.

On April 17, 2003, Mr. Dye filed a motion to amend findings of fact and conclusions of law supporting the confirmation order, a motion to reconsider the confirmation order and a motion for new trial (document no. 512). The Court denied those motions in an order entered on April 18, 2003. Mr. Dye appealed neither the confirmation order nor the order denying his motions.

On April 25, 2003, Mr. Dye filed an emergency motion to appoint a trustee (document no. 518), which he amended on April 28, 2003 (document no. 519). The Court denied that motion, as amended, on May 14, 2003.

On April 17, 2003, Mr. Dye also filed a complaint initiating adversary proceeding no. 03-9119 against Coastal Care Resources, L.L.C. to revoke the confirmation order on the ground that it had been procured by fraud. On June 20, 2003, the Court entered an order granting the defendant's motion to dismiss that adversary proceeding. On July 1, 2003, Mr. Dye filed a motion to reconsider that order (document no. 9), which the Court denied on January 14, 2004. This was the first pleading that Mr. Dye filed acting as his own attorney.

On September 15, 2003, Mr. Dye filed a motion for relief from judgment (document no. 554), in which he again sought revocation of the confirmation order. The Court denied that motion in an order entered on January 15, 2004.

In response to this hyper-activity by Mr. Dye, U.S. Bank filed numerous pleadings in response to claims made by Mr. Dye against it, and the other parties in the case also filed numerous pleadings in response to motions and claims made by Mr. Dye.

On September 22, 2003, John K. Rezac with the firm of Holland & Knight, LLP, counsel for Mr. Rollins and U.S. Bank, properly served Mr. Dye with a letter dated September 22, 2003 demanding withdrawal of the Rollins Motion and the Complaint. Enclosed with that letter was a copy

of a motion for sanctions and brief, which Mr. Rezac stated Holland & Knight, LLP would file unless within 21 days Dye withdrew the Rollins Motion and the Complaint.

Mr. Dye did not withdraw the Rollins Motion or the Complaint. As previously stated, Mr. Rollins and U.S. Bank filed their motion for sanctions against Mr. Dye on October 15, 2003 in the main case and on October 20, 2003 in the adversary proceeding.

The filing of these motions did not deter Mr. Dye. On November 3, 2003, he filed in the main case an amended and restated motion for relief from judgment and a response to U.S. Bank's motion for sanctions against him (document no. 570). Also on November 3, 2003, he filed a response to U.S. Bank's motion in the adversary proceeding. On January 12, 2004, he filed a supplement to the Complaint with an "objection to the dischargeability of a debt."

The Court denied Mr. Dye's Rollins Motion in an order entered October 15, 2003. In an order entered on January 15, 2004, the Court granted U.S. Bank and Trust, N.A.'s motion to dismiss with prejudice adversary proceeding no. 03-9288 initiated by the Complaint

Mr. Dye's Rollins Motion, including an attached affidavit of Mr. Dye with numerous exhibits, contains 38 pages. In the Rollins Motion, Mr. Dye alleged (1) that he suffered "personal injury traceable to unlawful conduct by Mr. Jim Rollins . . ." (Rollins Motion, p. 1), (2) that "each, Rollins and Walsh, have repeatedly filed groundless and frivolous pleadings" (Rollins Motion, p. 2), and (3) that "Mr. Walsh and Mr. Rollins knew or should have known that their filings and actions were contrary to their understanding of the laws associated with this case" (Rollins Motion, p. 3). Mr. Dye quoted Bankruptcy Rule 9011(b)(3). He further alleged that pleadings filed by Mr. Rollins and Mr. Walsh are "incorrect" and "misleading" and contain "inconsistencies." (Rollins Motion, p. 8.)

On page 5 of his Rollins Motion, Mr. Dye stated that he would focus on five filings, specifically, document nos. 245, 246, 427, 433 and 516. He later alleged,

[m]y analysis of these documents confirmed an inconsistency of the reported holders of record in the Coastal Care Resources, L.L.C. bond financing. Mr. Rollins and Mr. Walsh knew, or should have known that the information contained in those documents was not only incorrect but misleading to this court.

Rollins Motion, p. 8. These are the only pleadings that Mr. Dye mentions in condemning the conduct of Mr. Rollins.

Document no. 245 is a report of balloting filed by Timothy Walsh on June 21, 2002.

Document no. 426 is a certification of ballots on the second round of voting on GMS's second amended plan of reorganization filed by Timothy Walsh on October 28, 2002. Document no. 427 is an amendment to the report of balloting filed by Mr. Walsh on October 28, 2002. Document no. 433 is an affidavit of Kenneth Siev, an officer of Bondholder Communication Group, in which he certified the mailing of solicitation materials to beneficial owners of Coastal Care bonds. Mr. Siev filed document 433 on November 1, 2002. The Debtor and GMS had jointly retained Bondholder Communication Group with court approval. Finally, document no. 516 is a notice filed by Timothy Walsh on April 24, 2003, to which is attached an unsigned limited liability company agreement for Coastal Care [as reorganized debtor], including a schedule of names and unit ownership of members.

As this detailed summary of Mr. Dye's Rollins Motion shows, Mr. Dye failed to identify any document filed by Mr. Rollins or by U.S. Bank, much less one that violated Rule 9011. Moreover, as Mr. Rollins and U.S. Bank pointed out to Mr. Dye in the brief accompanying their motions, Mr. Dye did not comply with the provision in Bankruptcy Rule 9011(c)(1) requiring the movant to wait 21 days after service of a sanctions motion before filing it.

The Complaint filed by Mr. Dye against U.S. Bank contains 52 pages, including 34 pages of exhibits. In the first count, Mr. Dye alleged that U.S. Bank violated its fiduciary duties as indenture

trustee by repeatedly failing to determine the true owners of bonds, that it unequivocally supported the plan proposed by GMS, that it failed to examine a bond certificate presented by GMS to the examiner showing GMS to be a bondholder, that it failed to adequately and properly disclose its fees, that it failed to offer support to Mr. Dye in his endeavor to obtain a membership interest to which he claims to be entitled, and that it failed to question multiple ballots filed by Stamper Capital Investments, Inc. and Evergreen High Income Municipal Bond Company with respect to the same bonds. As a result of this alleged misconduct, Mr. Dye sought an award of punitive damages against U.S. Bank.

In the second count of the Complaint, Mr. Dye sought revocation of the confirmation order confirming GMS's plan on the ground that it was procured by fraud. He alleged that U.S. Bank failed to question and examine documents presented in the case, that it and Mr. Rollins were aware of the fraudulent conduct of GMS but went along with the plan to obtain indemnification from the reorganized debtor, and that GMS failed to disclose that it controlled a \$1,000,000 bond through its acquisition of State Street Bank. Mr. Dye amended the Complaint subsequent to the filing of a motion to dismiss by U.S. Bank in which he asserted that the debt owed by U.S. bank for its breach of fiduciary duties should be declared nondischargeable under 11 U.S.C. § 523(a)(2)(A).

In the Court's January 15, 2004 order granting U.S. Bank's motion to dismiss the adversary proceeding, the Court determined (1) that it lacked jurisdiction over any claim of Mr. Dye against U.S. Bank arising out of its conduct as indenture trustee, (2) that the doctrine of claim preclusion barred him from relitigating the issues he raised or could have raised in the confirmation hearings, including all issues of fraud concerning bond ownership, and (3) that his amendment seeking relief under section 523(a)(2)(A) of the Bankruptcy Code failed to state a claim for relief.

Rule 9011 of the Federal Rules of Bankruptcy Procedure provides in relevant part:



(b) By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions.

If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated.

(A) *By Motion.* A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

\* \* \*

(2) *Nature of Sanction; Limitations.* A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

\* \* \*

“Sanctions under Bankruptcy Rule 9011 are warranted when (1) the papers are frivolous, legally unreasonable or without factual foundation, or (2) the pleading is filed in bad faith or for an improper purpose.” *Glatter v. Mroz (In re Mroz)*, 65 F.3d 1567, 1572 (11<sup>th</sup> Cir. 1995). “In deciding cases based on violations of Rule 9011, courts may look to cases that interpret Federal Rule of Civil Procedure 11. *See Valley Nat'l Bank of Ariz. v. Needler (In re Grantham Bros.)*, 922 F.2d 1438, 1441 (9<sup>th</sup> Cir.1991).” *In re Weiss*, 111 F.3d 1159, 1170 (4<sup>th</sup> Cir. 1997).

In [the 11<sup>th</sup>] circuit, a court confronted with a motion for Rule 11 sanctions first determines whether the party's claims are objectively frivolous--in view of the facts or law--and then, if they are, whether the person who signed the pleadings should have been aware that they were frivolous; that is, whether he would have been aware had he made a reasonable inquiry. *McGuire Oil Co. v. Mapco, Inc.*, 958 F.2d 1552, 1563 (11<sup>th</sup> Cir.1992).

*Jones v. International Riding Helmets, Ltd.*, 49 F.3d 692, 694 (11<sup>th</sup> Cir. 1995).

As Mr. Rollins and U.S. Bank point out in the brief submitted in support of their motion for sanctions, Mr. Dye's Rollins Motion and the Complaint have no factual support. Mr. Dye failed to allege any facts that might be reasonably construed to support his contentions of fraud and misconduct on the part of GMS, U.S. Bank and their respective attorneys. In the Rollins Motion, Mr. Dye did not mention or otherwise identify any document filed by Mr. Rollins, much less one that violated Bankruptcy Rule 9011. In the Complaint, Mr. Dye stated conclusions of law but alleged no facts to show that U.S. Bank in any way breached its duties under the trust indenture related to the

Coastal Care bonds. At the January 29, 2004 hearing, Mr. Dye offered no evidence to show that any of the factual contentions he made in the Rollins Motion or the Complaint had any evidentiary support.

There is also no legal support for the relief sought by Mr. Dye in his Rollins Motion or in the Complaint. The Rollins Motion concerns five documents, none of which Mr. Rollins filed. Mr. Dye did not prove or even argue at the January 29, 2004 hearing that Mr. Rollins did anything that would even remotely constitute a possible violation of Rule 9011. Nor did Mr. Dye dispute that he had not provided Mr. Rollins and U.S. Bank with a copy of the Rollins Motion 21 days prior to the filing of that motion.

Likewise, Mr. Dye failed to show at the January 29, 2004 hearing that his claims against U.S. Bank were warranted by existing law or by a nonfrivolous argument for an extension, modification or reversal of existing law or the establishment of new law. The first count of the Complaint sought damages based in large measure on allegations that U.S. Bank as indenture trustee had failed to oppose the GMS plan by questioning alleged voting irregularities and alleged discrepancies in bond ownership. The Complaint alleged no facts showing the existence of any misconduct by U.S. Bank or any act that could have in any way injured Mr. Dye. The Complaint does not even allege that he owned a Coastal Care bond.

The Court lacked jurisdiction to consider Count I of the Complaint because the relief sought by Dye could have had no effect on this bankruptcy case under any circumstances. (In the Complaint, Mr. Dye complains that U.S. Bank failed to assist him in establishing a membership interest in the reorganized Debtor. Not only does the Court not have jurisdiction to entertain such a claim, but Mr.

Dye failed to show that the failure of U.S. Bank to help him in that regard in any way constituted a breach of the trust indenture.)

The second count of the Complaint seeking revocation of the discharge order is equally devoid of any legal support. U.S. Bank was plainly not a proper party against which such relief might be sought because it did not propose the plan and was not the debtor. As previously indicated, the doctrine of claim preclusion barred Mr. Dye from relitigating the issues raised or that could have been raised during the confirmation hearings.

Mr. Rollins and U.S. Bank contend that Mr. Dye filed the Rollins Motion and the Complaint for improper purposes which were to abuse the bankruptcy process, to cause delay, and to “cause unnecessary inconvenience and expense to U.S. Bank and Mr. Rollins.” (Brief of U.S. Bank, p. 14.) The Court agrees. Mr. Dye, throughout this case, and the Debtor when he controlled it filed numerous pleadings asserting that GMS did not own bonds that it claimed to own, that the balloting process was marred by fraud, that U.S. Bank was failing to do its duties to protect the interests of bondholders, etc. Mr. Dye had numerous opportunities throughout the case to produce evidence to support his allegations, but he failed to do so.

In short, the Rollins Motion and the Complaint are frivolous. The Court therefore turns to the issue of whether Mr. Dye knew the Rollins Motion was frivolous.

Mr. Dye was well aware of the existence and requirements of Rule 9011. Only 17 days before he filed the Rollins Motion, he had filed a successful objection (document no. 543) to a motion filed by the reorganized Debtor and GMS for sanctions against him in which he stated that those movants had not provided him with 21 days’ notice before filing the Rule 9011 motion as required by

Bankruptcy Rule 9011(c). That objection was filed on his behalf by his attorney, Frank Moore, but Mr. Dye is presumed to know its contents.

In addition, the Court gave Mr. Dye a warning that he might be violating Rule 9011 at least three times in written orders. In an order entered in the main case on March 26, 2003 (document no. 493), the Court granted a motion of U.S. Bank to quash subpoenas served by Dye's counsel in connection with his objection to the fee application of the examiner. In that order, the Court stated, "[t]he subpoenas sought the production of documents concerning Mr. Dye's seemingly endless quest to show that The GMS Group, LLC is not the owner of bonds secured by the Debtor's property. This quest continues to raise the possibility that Mr. Dye and his counsel are in violation of Fed. R. Bank. P. 9011." In an order entered on May 14, 2003 (document no. 523), the Court denied Mr. Dye's motion to appoint a trustee in which the Court explained in great detail to Mr. Dye the reasons for that denial and in particular why the doctrine of claim preclusion or res judicata barred him from seeking to relitigate the issues litigated or that could have been litigated at the confirmation hearing. The Court concluded with these words:

In summary, Mr. Dye's motion to appoint a trustee is totally without merit. That Mr. Dye had no basis on which to make this motion should have been clear to him and to Mr. Moore. He and his counsel are again admonished that Bankruptcy Rule 9011 governs the making of factual and legal representations to the Court that are presented for an improper purpose, have no evidentiary support or are not warranted by existing law or by a nonfrivolous argument for changing that law. Violation of this rule can lead to monetary sanctions, including any damages suffered by parties in interest in having to deal with violations of that rule.

Finally, in the order entered on October 17, 2003 (document no. 567), which among other rulings denied his motion for sanctions against Mr. Rollins, the Court again admonished Mr. Dye:

The Court notes that Mr. Dye has filed a motion (document no. 554) under Rule 60 of the Federal Rules of Civil Procedure made applicable by Bankruptcy Rule

9024 to alter or amend the judgment confirming the GMS plan. This is in effect the second time he has asked the Court to reconsider the confirmation of the GMS plan. That motion and Mr. Dye's motion to reconsider (document no. 9) filed in adversary no. 03-9119 appear at first blush to cause Mr. Dye to skate on thin Rule 9011 ice. He should consider consulting competent counsel.

Although this order did not reach Mr. Dye until after Mr. Rollins had filed his motion for sanctions, it gave Mr. Dye ample time to withdraw the Complaint.

Mr. Dye knew at the time that he filed the Rollins Motion and the Complaint that this Court had rejected in three different orders his claims that GMS did not own bonds and had committed fraud on the Court and that there had been misconduct in connection with voting on the GMS plan. He knew from prior orders of the Court that the doctrine of res judicata or claim preclusion precluded him from relitigating those issues. He knew that in the Rollins Motion, he had failed to mention or to identify any pleading signed or advocated by Mr. Rollins and in particular any that lacked a proper factual or legal basis. He knew or should have known that the so-called inconsistencies between votes cast in favor of GMS's plan and the membership list in the reorganized Debtor do not constitute proof that the confirmation order was obtained by fraud.

Mr. Dye's conduct is very similar to the conduct of the debtor in *Ballato v. Ballato*, 190 B.R. 447 (M.D. Fl. 1995). In that case, the district court affirmed an order of the bankruptcy court sanctioning the pro se debtor for filing multiple motions attacking a compromise previously approved by the bankruptcy court. The debtor had filed 19 motions asserting that the trustee and bankruptcy judge were biased and that the compromise should not have been approved because the claims settled arose from fraud. A motion that attempts to relitigate a decided issue or introduces nothing new is frivolous on its face. *Id.* at 449, citing *Nitram, Inc. v. Industrial Risk Insurers*, 149 F.R.D. 662, 663 (M.D. Fla. 1993) and *MGIC Indemnity Corp. v. Weisman*, 803 F.2d 500, 505 (9<sup>th</sup> Cir. 1986).

The fact that he acted as his own attorney is not a defense to these motions. “Rule 9011 does not exempt pro se litigants from its operation; a pro se litigant has the same duties under Rule 9011 as an attorney.” *In re Weiss*, 111 F.3d 1159, 1170 (4<sup>th</sup> Cir. 1997).

The only defense mounted by Mr. Dye at the January 29, 2004 hearing was his testimony that he has a good faith belief that the positions he advocated in the Rollins Motion and the Complaint were true and correct. The Court does not believe Mr. Dye. He has demonstrated throughout this case a willingness to say and do anything in an attempt to maintain his control of Coastal Care Resources, L.L.C. Mr. Dye’s conduct in filing the motion to sanction Mr. Rollins and the Complaint mirrors his conduct described in the Findings of Fact supporting the confirmation order filed on April 7, 2003, as a “pattern of wild activity backed by no proof whatsoever.” Findings of Fact filed April 7, 2003, document no. 503, p. 19. In those Findings of Fact, the Court found that Mr. Dye was “on a vendetta against GMS.” Findings of Fact, document 503, p. 16. One of the claims made by Mr. Dye in the Complaint is that U.S. Bank “unequivocally supported the plan proposed by the GMS Group.” Complaint in Adversary Proceeding no. 03-9288, document no. 1, p. 5. Mr. Dye was not acting in good faith in filing these documents. Instead, he continued on his vendetta, adding Mr. Rollins and U.S. Bank as targets and making allegations against them that have no factual or legal basis whatsoever. His failure to withdraw the Rollins Motion and the Complaint after he received the unfiled motion for sanctions against him, which explained in thorough detail why those pleadings crossed the Rule 9011 line, further supports the finding that his claim of good faith is a fabrication.

In short, Mr. Dye knew that the Rollins Motion and the Complaint were frivolous. In filing the Rollins Motion and the Complaint and the later pleadings to support those filings, he acted deliberately. He had no legitimate purpose in filing those documents and no legal excuse for doing so

in violation of Bankruptcy Rule 9011. He acted maliciously and in bad faith in an effort to injure U.S. Bank.

Movants seek a monetary sanction against Mr. Dye equal to the amount of attorney's fees and expenses incurred by U.S. Bank in responding to the Rollins Motion and the Complaint and in bringing the motions for sanctions. At the January 29, 2004 hearing, James H. Rollins, an attorney with Holland & Knight, counsel for U.S. Bank, credibly testified that his firm had billed U.S. Bank \$6,287.00 in fees and \$98.60 in expenses with respect to the defense of the Rollins Motion, \$4,482.00 in fees and \$117.48 in expenses with respect to the defense of the adversary proceeding and \$11,720.00 in fees and \$1,062.92 in expenses in prosecuting the Rule 9011 motions against Mr. Dye. Mr. Rollins' testimony established that the amounts of time he and Mr. Rezac spent on these matters and the rates they charged were reasonable and necessary. Mr. Dye did not challenge any aspect of the proof of damages suffered by U.S. Bank by incurring attorney's fees and expenses caused by Mr. Dye's conduct.

Because the motions for sanctions against Mr. Dye filed in the main case and in the adversary proceeding are identical, the Court allocates one half of the fees and expenses incurred by U.S. Bank with respect to those motions to the main case in which the Rollins Motion was filed and one half to the adversary proceeding. Hence, the total fees and expenses attributable to the defense of the Rollins Motion and the Rule 9011 motion in the main case are \$12,147 in fees and \$630.06 in expenses for a total of \$12,777.06. The total fees and expenses attributable to the defense of the adversary proceeding and the Rule 9011 motion in the adversary proceeding are \$10,342.00 in fees and \$648.94 in expenses for a total of \$10,990.94. The Court will enter judgments in favor of U.S. Bank and against Mr. Dye for \$12,777.06 in the main bankruptcy case and for \$10,990.94 in the adversary



proceeding. The total amount of the monetary sanctions imposed against Mr. Dye of \$23,768.00 is reasonable, appropriate and necessary and to reimburse U.S. Bank for its costs in defending itself and Mr. Rollins and in bringing the Bankruptcy Rule 9011 motions against Mr. Dye and thereby to deter Mr. Dye from continuing his pattern of filing abusive and frivolous pleadings.

Finally, movants seek to bar Mr. Dye from filing further pleadings in this case without the Court's prior approval. Such a sanction is reasonable and necessary in view of Mr. Dye's conduct. For these reasons, it is

ORDERED that the motions of U.S. Bank and James H. Rollins seeking sanctions against Stephen L. Dye are GRANTED; the Court will enter separate judgments in favor of U.S. Bank and against Stephen L. Dye for monetary sanctions; and it is

FURTHER ORDERED that Stephen L. Dye is enjoined from filing or serving on any person or entity any motion, application or complaint seeking relief from this Court in the main bankruptcy case of Coastal Care Resources, L.L.C. or in any adversary proceeding associated with this case without having first obtained written authorization from this Court to do so. To request permission to file and serve any such motion, application or complaint, Mr. Dye or any attorney representing Mr. Dye shall file with the Clerk of this Court, but shall not serve on any person or entity, a motion for such relief to which any such motion, application or complaint shall be attached. Such a motion may not be filed in Chambers, and no courtesy copy shall be delivered to Chambers. Mr. Dye shall not communicate with Chambers by letter, e-mail or fax.

This 12<sup>th</sup> day of February 2004.

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JAMES E. MASSEY  
U.S. BANKRUPTCY JUDGE